

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Melanie McDermott, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

General Mills Sales, Inc.,

Defendant

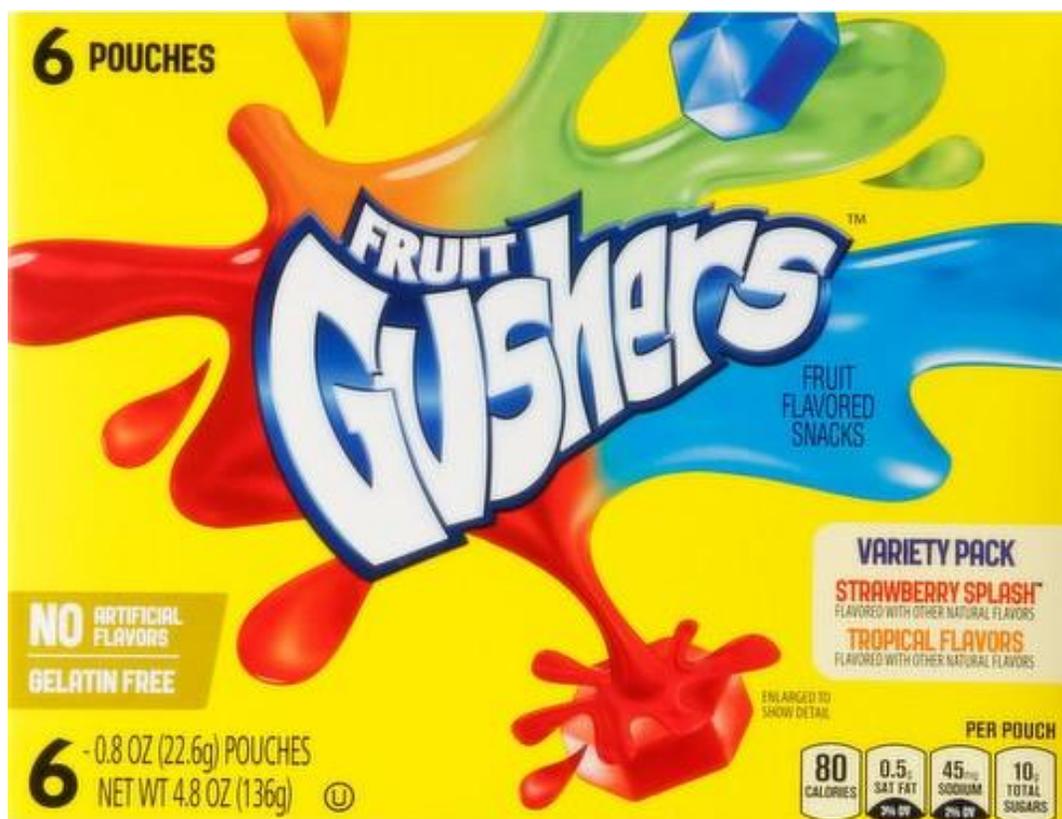
1:22-cv-01555

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

1. General Mills Sales, Inc. (“Defendant”) manufactures, labels, markets, and sells fruit snacks filled with thick, fruit flavored liquids under the Gushers brand (“Product”).



2. The relevant representations include “Fruit Gushers,” “Fruit Flavored Snacks,” “Strawberry Splash – Flavored With Other Natural Flavors,” “Tropical Flavors – Flavored With Other Natural Flavors,” “No Artificial Flavors,” “Gelatin Free,” and various fruit-colored liquids and images of the individual pieces.

3. The representations about the Product’s fruit flavors cause consumers to expect only natural fruit flavors.

4. However, the representations are false, deceptive, and misleading, because the Product contains artificial flavoring ingredients.

I. CONSUMER DEMAND FOR NATURAL FLAVORS

5. Consumers have been increasingly concerned about the ingredients added to what they eat and drink.

6. This is especially so when it comes to parents with young children.

7. Surveys have shown that such parents are less likely to buy snacks for their kids which have artificial ingredients, even where the food or beverage is considered an indulgence or treat.

8. According to the Wall Street Journal, “As consumer concern rises over artificial ingredients, more food companies are reconstructing recipes” to remove artificial flavors.¹

9. According to Paul Manning, chief executive officer and president of Sensient Technologies, “Consumer desire for naturally flavored products is an emerging trend.”²

10. According to Consumers Union, over 80% of consumers expect that the word

¹ Lauren Manning, How Big Food Is Using Natural Flavors to Win Consumer Favor, Wall Street Journal.

² Keith Nunes, [Using natural ingredients to create authentic, fresh flavors](#), Food Business News, Sept. 20, 2018.

“natural,” in almost any context, on a food label means that a food does not contain any artificial ingredients.

11. Explanations for why consumers prefer foods containing natural, instead of artificial ingredients, are varied.

12. Many Americans believe products are healthier when artificial ingredients are removed, even in “unhealthy” categories such as snacks, cake mix, and frozen pizza.

13. A recent survey reported that over 82% of US respondents believe that foods with artificial flavors are less healthy than those promoted as containing natural flavors and/or not containing artificial flavors.

14. Consumers seek to avoid artificial flavors because they are weary of ingredients which are highly processed with chemical additives and synthetic solvents in laboratories.

15. According to Nielsen, the absence of artificial flavors is very important for over 40% of respondents to their Global Health & Wellness Survey.

16. One scholar theorized “the preference for natural products appeals to a moral ideology and offers a moral satisfaction.”³

17. The trade journal, *Perfumer & Flavorist*, described “The Future of Artificial Flavors & Ingredients” as bleak, given consumer opposition to these synthetic ingredients.⁴

18. Mintel announced that consumer avoidance of artificial flavors is just as strong as

³ Rozin, P., Spranca, M., Krieger, Z., Neuhaus, R., Surillo, D., Swerdlin, A., & Wood, K. (2004). Preference for natural: Instrumental and ideational/moral motivations, and the contrast between foods and medicines. *Appetite*, 43(2), 147–154. doi:10.1016/j.appet.2004.03.005.

⁴ Jim Kavanaugh, [The Future of Artificial Flavors & Ingredients](#), *Perfumer & Flavorist*, June 12, 2017.

their desire for natural flavors, in its Report, “Artificial: Public Enemy No. 1.”⁵

19. About half of Americans say they seek out natural flavors at least some of the time.

20. In contrast, artificial flavors were sought out by only about one in 10 consumers, with approximately half saying they avoid each of them at least some of the time.

21. Nielsen reported that 62% of consumers try to avoid artificial flavors.

22. New Hope Network concluded that 71% of consumers avoid artificial flavors.

23. Label Insight determined that 76% of consumers avoid artificial flavors.

24. A recent survey shows more than three in four people worldwide are convinced that artificial flavors have no place on their ingredient lists.⁶

25. According to Forbes, 88% of consumers consider foods without artificial flavors to be more natural and healthier than foods with artificial flavors, and would pay more for such foods.

II. CONSUMERS VALUE FRUITS

26. Consumers increasingly value fruit and natural fruit flavors.

27. Even where a product is a snack food, the addition of natural fruit flavors and absence of artificial flavors causes consumers to feel better about consuming it, without the typical guilt from eating a snack.

28. The last two decades have seen significant increases in consumer demand for strawberries and tropical fruits.

29. Among tropical fruits, the most consumed include pineapples, guavas, mangos, and

⁵ Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019; Thea Bourianne, [Exploring today’s top ingredient trends and how they fit into our health-conscious world](#), March 26-28, 2018; Nancy Gagliardi, [Consumers Want Healthy Foods – And Will Pay More For Them](#), Forbes, Feb 18, 2015.

⁶ What ‘Natural’ Really Means to Consumers GNT Group’s Guide to Global Consumer Demands attests importance of natural colors for future-proof products, July 13, 2017.

bananas.

30. Other tropical fruits which are popular include papayas, oranges, passionfruit, limes, lemons and kiwis.

III. PRODUCT REPRESENTED AS ONLY CONTAINING NATURAL FLAVORS

31. Defendant markets the Product with the prominent statement, “No Artificial Flavors.”



32. The representation that the Product has “No Artificial Flavors” appeals to the more than seven out of ten consumers who avoid artificial flavors.

33. This conveys to consumers that the Product will get its strawberry and tropical taste from only natural flavoring ingredients.

34. Though the ingredients listed for the strawberry and tropical varieties include “Natural Flavor,” they also include “Malic Acid.”

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.